THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 20996 of 2005

Dated 27/09/2005

Between:

Y.Panditha Rao S/o. Narsaiah
R/o. Gannamala Village Turkapalli Mandal
Nalgonda District.

..... PETITIONER

AND

1 The Regional Transport Officer
Nalgonda and others

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

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THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 20996 of 2005

Oral Order: (Per Sri BRSR.J)

Heard the learned counsel for the petitioner and the learned Government Pleader for Transport and at their request the matter is taken up for final disposal at the stage of admission.

The grievance of the petitioner in the instant writ petition is that in spite of filing an application under Section 207(2) of the Motor Vehicles Act, 1988 read with Rule 448-B of the Motor Vehicle Rules, 1989, the authority having seized the vehicle

under check report No. 1891204 dated 8.9.2005 did not dispose of the same.

This Court in ***Saleem Tours and Travels v. Joint Transport Commissioner & Secretary, RTA*** held as follows;

1. A vehicle plying in breach of conditions of permit as regards the purpose of usage of the vehicle an be seized under Section 207 of the Motor Vehicles Act, but not under Section 8 of A.P.M.V. Taxation Act. But, the mere fact that the latter provision is also quoted does not vitiate seizure.

2. The vehicle so seized cannot be detained until the completion of enquiry under the Taxation Act and the payment of tax if any pursuant to the demand raised.

3. The vehicle seized under Section 207 on the ground of contravention of conditions of permit should not be detained for unduly long time and on application filed by the vehicle operator, the vehicle ought to be released with expedition subject to stipulation of conditions to ensure non-alienation of the vehicle and the production of vehicle in connection with the enquiry unless there are exceptional circumstances which make the release of vehicle frustrate the enquiry. Such conditions may include furnishing of cash security of a reasonable amount which could be adjusted later on towards compounding fee or tax if any demanded. Incidentally, it may be mentioned that this Court while directing release of vehicles has been directing deposit ranging between Rs.2,000/- to Rs.5,000/- .

4. The demand of estimated tax to be determined after due enquiry under the provisions of the Taxation Act or furnishing security therefore shall not be made a condition precedent for the release of the vehicle seized under Section 207 of the MV Act.

5. In exceptional cases where there is reasonable apprehension that the vehicle will not be available for taking further action or the ultimate order passed in the light of the enquiry cannot be implemented on account of any special facts and circumstances, the competent Transport authority can withhold the release or stipulate any appropriate conditions for release other than the payment of tax not yet determined. In such a case, it is expected of them that the reasons are recorded in writing.

6. If the competent authority refuses to release the vehicle within

> a reasonable time, say within three days, after the application is made in this behalf, or imposes onerous conditions, resort to remedy under Article 226 is open to the aggrieved person. The Court may direct release of the vehicle on such conditions as may be deemed appropriate viz., deposit of certain amount in order to secure the production of vehicle in connection with the enquiry or prosecution prohibition the transfer of the vehicle etc., If any amount is deposited pursuant to the order of the Court, the same is liable to be adjusted ultimately against the compounding fee or the tax payable.

However, having regard to the nature of the vehicle being Tractor and Trailer, we consider it appropriate to direct the release of the Tractor bearing No.AP/24/U/5437 along with Trailor bearing No.AP/24/U/5438, seized by the 2nd respondent under vehicle check report No.1891204 dated 8.9.2005 subject to the condition of the petitioner depositing the tax payable thereon. The other proceedings shall be subject to the result of the enquiry and final orders to be passed by the authority. The petitioner shall also file an undertaking before the authority that he shall not transfer, encumber or alienate the Tractor and Trailor in any manner whatsoever during the pendency of the proceedings.

The writ petition is accordingly disposed of. No costs.

(B.SUDERSHAN REDDY,J)

dated 27.09..2005

(S.ANANDA REDDY,J)

Note: Issue CC by tomorrow

(B/o)

msv